

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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PAUL SCOTT KLEIN,)
Plaintiff(s),)
vs.)
FRED TOCCO, *et al.*,)
Defendant(s).)
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2:06-cv-0494-RLH-RJJ
O R D E R
(Motion to Dismiss—#59)

Before the Court is Plaintiff's Motion to Voluntarily Dismiss the Complaint

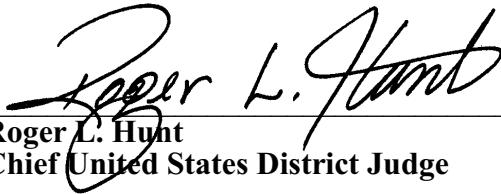
Without Prejudice (#59, filed May 14, 2010). Inasmuch as Plaintiff has failed to properly serve the defendants for four years, no response is anticipated and the Court will rule without delay.

This case was filed April 20, 2006, although the Complaint was not officially filed until May 10, 2006. Plaintiff failed to have the named defendants properly served. His efforts to obtain temporary restraining orders, orders to show cause, and defaults against the unserved defendants were refused. He appealed this Court's decisions to the Circuit Court of Appeals, but his appeal was denied as without jurisdiction.

Failing to serve the Defendants for four years, without excuse, violates Fed. R. Civ. P. 4(m). Failing to prosecute this lawsuit for nearly two years violates Rule 41(b). Moreover, Plaintiff now moves for dismissal, albeit without prejudice. Under the circumstances, and for the additional reason that the statute of limitations has run on Plaintiff's claims, the complaint will be dismissed with prejudice.

1 IT IS THEREFORE ORDERED that Plaintiff's Motion to Dismiss (#59) is granted,
2 but it is dismissed with prejudice.

3 Dated: May 20, 2010.

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6 **Roger L. Hunt**
7 Chief United States District Judge

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